

**Planning Obligation by Deed of Agreement
under Section 106 of the Town and Country
Planning Act 1990**

relating to the development of land at land north of Station Road/East of Furniss
Way, West Town, Hayling Island Hampshire

Dated : 20th December 2013

The Council of the Borough of Havant (1)
Hayling Island Builders Limited (2)

DATE

20th December

2013

PARTIES

- (1) The Council of the Borough of Havant of Civic Offices, Havant, Hampshire PO9 2AX ("Council")
- (2) Hayling Island Builders Limited of First Floor, 29-39 London Road Twickenham Middlesex TW1 3SZ ("the Owner")

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the land shown edged red on Plan 1

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- | | |
|----------------------|---|
| "1980 Act" | means the Highways Act 1980. |
| "Act" | means the Town and Country Planning Act 1990. |
| "Affordable Housing" | means housing that should :

(a) Meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents

(b) Include provisions for the housing to remain at an affordable cost for future Eligible Persons or if these restrictions are lifted for any Subsidy to be recycled for alternative Affordable Housing provision |

"Affordable Housing Land" means that part of the Land on which the

Affordable Housing is to be situated

"Affordable Housing Provider"

means either one or a combination of:

- (a) a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or
- (b) such other body eligible to receive grant monies from the Council or the Homes and Communities Agency and able lawfully to own or manage housing for Qualifying Persons in Housing Need and approved by the Council; or
- (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council.

"Affordable Housing Units"

means a minimum of 30% of the total number of the Residential Units comprising approximately 70% Affordable Rented Housing/ Social Rented Housing and 30% Shared Ownership Homes or such other mix or tenure as shall be agreed by the Council and subject to market conditions, Subsidy and by prior written agreement with the Council which are to be made available by the Owner for Affordable Housing on the Affordable Housing Land as herein provided or any one or more of them.

"Affordable Rented Housing"

means Rented Housing provided by Registered Providers of Social Rented Housing that has the same characteristics as Social Rented Housing except that it is outside of the national rent regime but is subject to other rent controls that require it to be offered to eligible households at a rent of up to 80% of local market rents and in

accordance with the guidance issued by the Homes and Communities Agency in 2011.

- "Application" means the application for outline planning permission submitted to the Council for the Development and allocated reference number APP/13/00639.
- "Brent Goose Mitigation Strategy" means the Brent Goose Mitigation Strategy Report No. 1435_2011_R03b_JA dated 11 September 2013 prepared by Tyler Grange and The Brent Goose Mitigation Strategy-ADDENDUM Report No. 1425_2011_R04b_JA_RW dated 19 November 2013 prepared by Tyler Grange as appended at Appendix 3
- "Chargee" means any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.
- "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, ecological and

tree/woodland management and "Commence Development" shall be construed accordingly.

"Common Parts"

means the parts of the Land which do not comprise a dwelling or the curtilage of a dwelling and which are intended to benefit the occupiers of the Residential Units as a whole or to enhance their occupation shall without prejudice to the generality thereof include the unadopted roads, communal parking areas, footways, footpaths landscaped areas, amenity spaces drainage ditches and attenuation area

"Company"

means a company to be charged with the management of the Common Parts in accordance with Part 6 of the Second Schedule

"Development"

the Development of the Site pursuant to the outline Planning Permission for mixed-use development comprising up to 59 dwellings and 1,250sqm of light-industrial accommodation (Use Class B1)..

"Dwelling"

means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission.

"Eligible Persons"

means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly

"Employment and Skills Plan"

means a scheme for the improvement and benefit of the local labour market and economy, by raising skills and enabling local people to compete for the jobs generated, in a form as

appended at Appendix 1 to the reasonable satisfaction of the Council.

- "Full Residential Travel Plan" means a travel plan for any phase of Residential Development pursuant to an application for reserved matters pursuant to the Planning Permission in accordance with the requirements of part 10 of the Second Schedule
- "Highways Agreement" means an agreement for road alteration and improvement pursuant to (inter alia) Section 278 and Section 38 of the 1980 Act in a form to be agreed to the satisfaction of the County Council.
- "Homebuy Agent" means the body nominated by the Homes and Communities Agency to be responsible for low cost home ownership nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.
- "Homes and Communities Agency" means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any Registered Provider or if such body ceases to exist or is superseded the equivalent body
- "Index" means the All Items Index of Retail Prices issued by the Office for National Statistics.
- "Index – Linked" means the increase in value calculated in accordance with the provisions of Clause 10
- "Interest" means the interest at four per cent above the base lending rate of Barclays Bank Plc from time to time.

"Local Connection"	means a connection to the administrative area of the Council by virtue of:
	a. existing or previous residence; b. employment; c. close family links through parents or siblings or offspring or d. any other connection as agreed with the Affordable Housing Provider and Council.
"Low Cost Home Ownership"	means homebuy products as defined by the Homes and Communities Agency including Shared Ownership and "Low Cost Home Ownership Units" shall be defined accordingly.
"Monitoring Fee"	means the sum of £5,990.00 being a fee (and to be applied at such time and in such manner as the Council shall in its absolute discretion determine) used towards the costs to be incurred by the Council in the provision of suitably qualified and experienced persons whose function is inter alia to monitor co-ordinate and enforce planning deeds
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out maintenance or decoration or occupation for marketing or display or occupation in relation to security operations.
"Open Market Housing Units"	means the residential units available for sale on the open market but excluding the Affordable Housing Units
"Open Market Value"	means the price which 100% of the freehold or leasehold interest in the relevant Affordable Housing Unit would fetch if sold on the open

market by a willing vendor to a willing buyer and disregarding the obligations and restrictions contained in this Deed and approved by the Council

"Open Space Land" means the land shown for identification purposes hatched black on Plan 1

"Open Space Works" means the works to be carried out under part 1 of the Second Schedule in accordance with the Open Space Works Specification

"Open Space Works Specification" means a specification for the carrying out of Open Space Works and the maintenance thereof

"Plan 1 " means the site location plan attached to this Deed.

"Plan 2" means the Proposed Footway Improvements Plan attached to this Deed

"Planning Permission" means the planning permission resolved to be granted by the Council as a result of the Application.

"Practical Completion" means the issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect;

"Protected Tenant" means any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(c) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

"Registered Provider"

means a Registered Provider as registered with the Homes and Communities Agency or any successor body

"Rented Housing"

means the Affordable Housing to be constructed as Affordable Rented Housing/ Social Rented Housing

"Residential Development"

means the construction pursuant to the Planning Permission of any Dwellings

"Residential Units"

means residential dwellings whether individually or in groups and whether divided vertically or horizontally

"Shared Ownership Homes"

means affordable housing leased to a lessee who purchases a percentage of the equity of the housing unit and pays a rent in relation to the share of the equity retained by the Registered Provider

"Site"

means the land against which this Deed may be enforced as shown edged red on Plan 1 and as described in the First Schedule.

"Social Rented Housing"

means Rented Housing owned and managed by Local Authorities or Registered Providers for which guideline target rents are determined through the national rent regime but which may also include Rented Housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the Local Authority or with the Homes and Communities Agency as a condition of grant.

"Social Rented Housing Units"

means those Affordable Housing Units (and associated car parking spaces the number of which is to be agreed between the Owner and the Council) to be Occupied as Social Rented Housing and the expression Social Rented Housing Unit shall be construed accordingly or otherwise as agreed by the Council

"Solent Mitigation Strategy Contribution" means the contribution in respect of the Special Protection Area avoidance and mitigation measures delivered through the Solent Interim Planning Framework.

"Staircasing Receipts"

means monies receivable by an Affordable Housing Provider arising from the sale (net of reasonable evidenced sale costs) of any further share of the equity or ownership of a Shared Ownership Unit following the first acquisition by that occupier of an interest in that Affordable Housing Unit provided that such a receipt shall be excluded from this definition to the extent to which the Affordable Housing Provider is required to pay that receipt to the Homes and Communities Agency or any other person or body pursuant to an arrangement for Subsidy in relation to the provision of Affordable Housing Units on the Land

"Subsidy"

means any social housing grant or similar provided by the Council or the Homes and

Communities Agency or other such body as may succeed it

"SUDS"

means a sustainable urban drainage system for the Development in accordance with a specification agreed in writing by the Council and if statutorily empowered so to do by the County Council

"Travel Plan Approval Fee"

means the sum of Two Hundred And Fifty Pounds to be paid to the Council towards the Council's costs in approving the Travel Plan

"Travel Plan Monitoring Fee"

means the sum of Two Hundred And Fifty Pounds per year towards the Council's reasonable costs in monitoring the Travel Plan for a period of four years

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all

instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

2.7 The headings and contents list are for reference only and shall not affect construction.

3 **LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 to the intent that it will bind the interests of the Owner and its successors in the Site as described in the First Schedule .

3.2 The Owner together with its successors in title are responsible to the Council for the covenants, restrictions and requirements imposed upon the Owner under this Deed

3.3 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council in the case of covenants made with them as local planning authority against the Owner.

4 **CONDITIONALITY**

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses 8., 9 10, 13 14 and 15 which shall come into effect immediately upon completion of this Deed.

5 **THE OWNER'S COVENANTS**

The Owner covenants with the Council as set out in the Second Schedule.

THE COUNCIL'S COVENANTS

6

6.1

The Council covenants with the Owner as set out in the Third Schedule.

7

MISCELLANEOUS

7.1

The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed not to exceed the sum of £1,500 and shall pay the Travel Plan Approval Fee and Monitoring Fee on or before Commencement of Development.

7.2

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3

This Deed shall be registerable as a local land charge by the Council.

7.4

Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or Hampshire County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:

- (i) the Council by the Executive Head of Planning and Built Environment;
- (ii) Hampshire County Council by the County Director

And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5

Following the performance and satisfaction of all the obligations contained in this Deed or the Deed ceases to have effect under the provisions of clause 7.7 the Council shall upon the written request of the Owner forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6

Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.9 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them. Nor shall this Deed be enforceable against owner-occupiers or tenants of industrial premises constructed pursuant to the Planning Permission except in relation to Part 7 of the Second Schedule.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council and Hampshire County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.12 It is agreed by the parties that if prior to the receipt of any financial contribution due under the terms of this Deed the Council and Hampshire County Council incurs any expenditure in providing the facilities or works to which it was intended to apply any such financial contribution or (in consequence of arranging for the provision thereof) by the letting of a contract or otherwise including any design costs whether in anticipation of or as a result of the Development, then the Council and Hampshire County Council may immediately following receipt of such contribution deduct therefrom a sum equivalent to such expenditure incurred and for the avoidance of doubt it is hereby further agreed that such proportion of any such contribution shall not be the subject of any requirement to repay or otherwise account for it or any interest accrued thereon pursuant to the terms of this Deed and that such monies shall be and remain the property of the Council and Hampshire County Council and shall not be subject to the terms of this Deed.

WAIVER

No waiver (whether expressed or implied) by the Council (or Hampshire County Council or Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or Hampshire County Council or Owner) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site save and except for a change which shall be a disposition of a finished unit of residential accommodation or of a finished industrial unit occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

INDEXATION

Any sum referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the Index from the Commencement of Development until the date on which such sum is payable.

INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

DISPUTE PROVISIONS

In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference

shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs of the appointment of the expert and his fees shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and any costs of his appointment and his fees shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any material and written representations of the parties relevant to the matter to be determined by him.
- 13.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.
- 13.5 The provisions of this clause shall not affect the ability of the Council or the Owner to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief for the enforcement of any determination made pursuant to the provisions of this Clause or of any provisions of this Deed not referred for determination under provisions of this Clause.

14

JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

15

DELIVERY

The provisions of this Deed (other than this clause 15 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

Land at land north of Station Road/East of Furniss Way, West Town, Hayling Island Hampshire and shown edged red on the Plan and being

Part of the land registered at Land Registry with title number HP38369

SECOND SCHEDULE

The Owner's Covenants with the Council

Open Space

1 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

1.1 Prior to Commencement of Development to submit to the Council the Open Space Works Specification, to include a detailed design specification and timetable for provision of the Open Space to be agreed in writing between the Owner and the Council such agreement not to be unreasonably withheld.

1.2 Not to cause or permit the Occupation of any Residential Unit within the Site until provision of the approved Open Space and further, to carry out the Open Space Works in a proper and workmanlike manner in accordance with the specifications submitted to the Council for its prior written approval (such approval not to be unreasonably withheld or delayed).

1.3 From the date of Completion of the Open Space Works make the Open Space available for use for the purposes of public recreation by the Occupiers of the Residential Units and the public at large, unless agreed otherwise between the Owner and the Council that the public shall be excluded

2. Solent Mitigation Strategy

2 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

2.1 Prior to occupation of any part of the Site the Owner shall pay to the Council the Solent Mitigation Strategy Contribution being the sum of £10,325 towards the Solent Interim Planning Framework such sum to be held by Hampshire County Council

Brent Geese

3. The Owner hereby covenants with the Council as set out in this Part of the
3 Second Schedule as follows:-

- 3.1 Forever hereafter to implement the provisions (including monitoring) of the Brent
Goose Mitigation Strategy as amended by the Addendum of the 19 November
2013 a copy of which is annexed hereto

4. Affordable Housing

4. The Owner hereby covenants with the Council as set out in this Part of the
4 Second Schedule as follows:-

- 4.1.1 To provide 30% of the total number of units within the Development as Affordable
Housing Units. These Affordable Housing Units should subject to the provisions of
this part 4 of the Second Schedule reflect the mix of the site generally with the
precise mix and tenure of the Affordable Housing Units and the plan thereof to be
approved in writing by the Council prior to Commencement of the Development
and prior to the start of each phase of the Development.
- 4.1.2 To use reasonable endeavours to work with an Affordable Housing Provider to
pursue Subsidy for the development of the Affordable Housing Units prior to
Commencement of the Development.
- 4.1.3 To ensure that the Affordable Housing Units within the Development will be
integrated and compatible with the design of the Open Market Housing Units.
- 4.1.4 To ensure that no more than 50% of the Open Market Housing Units shall be
constructed and available for Occupation prior to the provision of 50% of the
Affordable Housing Units to an Affordable Housing Provider or Eligible Person (on
either a freehold basis or long leasehold of at least 125 years) and thereafter the
remaining Affordable Housing Units shall be constructed contemporaneously with
any adjoining Open Market Housing Units to provide a mixed development and
provided to an Affordable Housing Provider or Eligible Person (on either a
freehold basis or long leasehold of at least 125 years) prior to construction and
availability for occupation of the remainder of the Open Market Housing Units.

- 4.1.5 If the Owner has been unable to comply with the provisions of paragraph 4.1.4 part 4 of the Second Schedule then no Open Market Housing Units within the Development will be Occupied until the Affordable Housing Land has been transferred (fully provided with services) to an Affordable Housing Provider and written evidence of compliance in respect of the above has been supplied to the Council to its satisfaction.
- 4.1.6 Affordable Housing Units will be constructed to at least the minimum standard required by the Homes and Communities Agency (or such other successor body's standards) Design and Quality Standards (2007) and the Code for Sustainable Homes published by the Government (or such replacement guidance) or other similar standard as may be reasonably required by the Council.
- 4.1.7 Where Subsidy has not been secured or confirmed within 6 months of the Commencement of Development despite the use of reasonable endeavours so to do the Owner will notify the Council in writing that it has not been successful in securing Subsidy and the Council will then where it is reasonably satisfied that the Owner has complied with the obligations to use reasonable endeavours in all material aspects issue a written notice to the Owner confirming that in accordance with this part 4 of the Second Schedule the Owner can reduce the number of Rented Housing units in favour of in the first instance an increase in the number of Low Cost Home Ownership units to figures agreed with the Council subject to the Owner providing evidence as to:
- a. the level of any Subsidy available;
 - b. the Homes and Communities Agency's "Economic Assessment Tool" or any such other economic assessment tool submitted by the Owner and agreed by the Council to evaluate the tenure split of the Affordable Housing to be provided with the level of Subsidy available and that this exercise seeks to ensure that the land value paid by the Owner or market value of land previously owned by the Owner and the profit margins are not compromised and that if a reduction in the overall provision of Affordable Housing is required to achieve this then the Council will act reasonably in considering the same;
 - c. the results of any financial viability assessment carried out by the Owner.
- 4.1.8 Where the Owner intends to provide Rented Units in association with an

Affordable Housing Provider they shall only be used if the Affordable Housing Provider can demonstrate to the Council:

- (a) A good judgement by the Homes and Communities Agency or successor body; and
- (b) acceptable sustainable management arrangements and community development policies.

4.1.9 The Low Cost Home Ownership Units (including Shared Ownership) shall be let to persons nominated by the Homebuy Agent

4.1.10 The transfer to the Affordable Housing Provider of the Affordable Housing Land shall contain the following: (or such other alternative provisions as the Owner and the Council may agree in writing)

- (a) a covenant not to use the Affordable Housing Units otherwise than for the provision of Affordable Housing and
- (b) a covenant not to dispose of any of the Affordable Housing Units other than for the purpose of providing Affordable Housing to Eligible Persons, and
- (c) a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100 per cent of the Occupiers of the Rented Housing units when initially let and all subsequent true voids, and
- (d) a covenant to manage all Staircasing Receipts of Affordable Housing Units which are funded through the use of Subsidy in accordance with Homes and Communities Agency regulations, and
- (e) a covenant to provide the Council with details of Staircasing Receipts from non-Subsidy funded Affordable Housing Units and in co-operation with the Council to reach agreement to invest 50% of the Staircasing Receipts in the provision of new build Affordable Housing or to invest in

measures to enhance the provision of Affordable Housing within the administrative area of the Council including facilitating the acquisition of market housing or the conversion or refurbishment of existing housing to bring such housing back into beneficial use to enable it to be occupied by Eligible Persons provided that the use of Staircasing Receipts is limited to provision within the administrative area of the Council for a period of 3 years after receipt by the Affordable Housing Provider and thereafter for a period of 1 year within the administrative area of Hampshire and thereafter to any Affordable Housing provision within the United Kingdom.

- 4.1.11 The covenants set out in paragraph 4.1.10 part 4 of the Second Schedule shall not be binding or enforceable against any purchaser who purchases from the Affordable Housing Provider the entire freehold to an Affordable Housing Unit or a long leasehold interest pursuant to an equity share arrangement nor shall such covenants be binding or enforceable against such a purchaser's successors in title.
- 4.1.12 Where the Owner intends to provide management services for any Affordable Housing Units in association with an Affordable Housing Provider they shall only be used if the Affordable Housing Provider can demonstrate to the Council that they are approved and regulated for such activities by the Homes and Communities Agency or any successor body.
- 4.1.13 The Affordable Housing Units shall only be occupied by Eligible Persons.
- 4.1.14 In the event only that there is a default under any legal charge or mortgage of an Affordable Housing Units or any default under any legal charge or mortgage held by an Affordable Housing Provider in relation to the Affordable Housing Units then a mortgagee chargee receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 ("the Mortgagee") shall be entitled to exercise its power of sale in respect of an Affordable Housing Unit or Affordable Housing Units free from the obligations PROVIDED THAT the Mortgagee shall first follow the procedures set forth below:
- (a) the Mortgagee shall give 'written notice' ("the Notice") to the Council of its intention to exercise its powers of the sale and shall at the time offer to sell ("the

Offer") the Affordable Housing Unit or Affordable Housing Units to the Council for an amount ("the Purchase Price") to be agreed or determined in accordance with paragraph 4.1.14(c) of this part 4 of the Second Schedule

(b) the Council shall notify the Mortgagee in writing within one (1) month of the date of the Offer whether or not it wishes to accept the Offer (in the case of acceptance such acceptance to be expressed to be conditional upon the Purchase Price being agreed) and if it does not wish to accept the Offer the Council may at the time of notifying the Mortgagee of its decision nominate a nominee ("the Nominee") in its place if at the same time the Nominee accepts the Offer in place of the Council.

(c) if pursuant to paragraph 4.1.14(b) of part 4 of the Second Schedule the Council shall accept the Offer or shall nominate a Nominee so to do and the nominee shall accept the Offer as aforesaid, then the Mortgagee and the Council (or the Nominee as the case may be) shall endeavour to agree the Purchase Price which shall represent the open market value of the Affordable Housing Unit or Affordable Housing Units subject to tenancies subsisting at the date of the Notice but disregarding the provisions of this Deed which restrict Occupation to Eligible Persons and in default of agreement on the Purchase Price within two months of the Council's notification under paragraph 4.1.14(b) of part 4 of the Second Schedule the Purchase Price shall be determined by an Expert pursuant to the provisions of paragraph 14.1.14(b) of part 4 of the Second Schedule

(d) any transfer to the Council or to the Nominee shall be completed within two (2) months of the date the Purchase Price is agreed or determined by an Expert in accordance with the provisions of this paragraph 4.14 of this part 4 of the Second Schedule ("the Completion Period")

(e) either party may at any time give to the other written notice of its intention to discontinue in any of the following circumstances namely:

- if the Council shall fail to give notice of intention to accept the offer within one month of the date of the offer or

- if the Council shall decline the offer and fail to nominate a nominee within one month of the date of the offer or
- if either the Council or the Nominee shall at any time serve notice of intention to discontinue or
- if the transfer of the Affordable Housing unit or Affordable Housing Units shall not be completed within the Completion Period notwithstanding the readiness willingness and ability of the Mortgagee to complete the transfer

(f) Then in any of the above circumstances the Mortgagee shall be entitled (subject to compliance with Sections 39 to 50 of the Housing Act 1996 so far as is applicable) to exercise its powers of sale unfettered by the restrictions in this paragraph 4.1.14 of this part 4 of the Second Schedule which shall not be binding upon any purchaser from the Mortgagee or any subsequent successor in title of the Affordable Housing Unit or Affordable Housing Units and at the written request of the Mortgagee the Council shall expeditiously issue written confirmation that the restrictions in this paragraph 4.1.14 of this part 4 of the Second Schedule have been discharged and rendered of no effect in respect of the Affordable Housing Unit or Affordable Housing Units and the Council shall take steps to cancel any entry in the Local Land Charges Register insofar as it may be recorded against the Affordable Housing Unit or Affordable Housing Units

4.1.15 The Affordable Housing Units provided on the Affordable Housing Land will be monitored in order to ensure compliance with the obligations in this paragraph 4 of this part 4 of the Second Schedule and the Owners will impose a covenant upon the Affordable Housing Provider which requires them at such dates to be agreed by the parties to make written returns to the Council detailing

-the affordable housing provision including

-the type of dwelling,

-the tenure of the dwelling,

-the net internal floor area of the dwelling

-details of the occupiers

-the Subsidy provided for the dwelling

-technical information in relation to the Code for Sustainable Homes

-the location of the Affordable Housing Units

-any other information on the Affordable Housing Units as reasonably required by the Council.

5 **Highways Works**

5 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

5.1 Not to Commence Development prior to entering into the Highways Agreement with Hampshire County Council to deliver improvements to the footpath shown on Plan 2

5.2 In the event that a section 38 agreement is not entered into for the Land, public access will be retained on all footways/ footpaths and carriageways serving more than 6 dwellings

6. **Management Company**

6. The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

6.1 prior to the expiration of six months from the Commencement of Development to supply to the Head of Legal Services for written approval by the Council (such approval not to be unreasonably withheld or delayed):-

6.1.1 a draft memorandum and articles of association for the Company for the purpose of managing cleaning and maintaining the Common Parts the SUDS and the Open Space Land

6.1.2 proposals for arrangements to secure the future maintenance of the Common Parts the SUDS and the Open Space Land by the Company (which may include a Transfer of the Common Parts, the SUDS and Open Space Land to the Company or the granting of a long lease of the Common Parts, the SUDS and Open Space

Land by the Owner in favour of the Company) so as to ensure that the Common Parts the SUDS and the Open Space Land are properly maintained such proposals to include details of how the costs of maintaining the Common Parts, the SUDS and Open Space Land shall be met (by residents of the Dwellings or otherwise)

- 6.2 Any submission of documents or details to the Council pursuant to this Second Schedule shall include a reference to the Planning Permission the date and parties to this agreement, and the paragraph under which approval is sought, together with a statement of the date by which a decision must be given by the Council
- 6.3 The Council shall give notice to the Owner of its decision to either approve (with or without modifications) or to refuse to approve the details submitted by the Owner under Paragraph 6.1.1 and 6.1.2 part 6 of the Second Schedule above within one month of receipt of such details and in the event that the Council fails to give such notice the details as submitted shall be deemed to have been approved (provided the Owner has supplied the details fully in accordance with the provisions of this Schedule)
- 6.4 Forthwith after the approval by the Council of the proposed memorandum and articles of association (which approval may include such reasonable modifications as the Council considers appropriate) the Owner shall take all necessary steps to secure the formation and registration of the Company at Companies House (taking into account any reasonable modifications required by the Council) and to notify the Council accordingly within seven days of the completion of the registration of the Company
- 6.5 Within one month of the registration of the Company at Companies House the Owner shall carry out the proposals for arrangements to secure the future maintenance of the Common Parts, the SUDS and Open Space Land and to notify the Council upon completion of such arrangements.
- 6.6 The Owner shall repair and maintain the Common Parts the SUDS and the Open Space Land:-
- 6.6.1 until such time as the Company is registered and the maintenance arrangements to be approved by the Council have been completed and the land transferred to the Company and all Dwellings on the Land have been sold or leased; and

6.6.2 in the event of the Company at any time during the Perpetuity Period applicable to this Deed failing to maintain the Common Parts SUDS and Open Space Land to the reasonable satisfaction of the Council

6.7 At any time prior to the expiry of six months from the Commencement of Development the Owner may submit to the Council for its written approval alternative proposals for the maintenance and upkeep of the Common Parts, SUDS and Open Space Land (such approval not to be unreasonably withheld or delayed) and in relation to any such alternative arrangements the provisions of paragraphs 6.1 6.2 6.3 6.4 6.5 and 6.6 of Part 6 of the Second Schedule shall apply to the extent that the Owner shall remain responsible for the maintenance and upkeep of the Common Parts , SUDS and Open Space Land without prejudice to the generality of paragraph 6.6.2 part 6 of the Second Schedule above until such alternative arrangements (as approved by the Council) have been fully implemented

7. Employment and Skills

7 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

7.1 Prior to Commencement of the Development to submit to the Council for written approval the Employment and Skills Plan and not to Commence the Development or permit Commencement of Development until an Employment and Skills Plan has been approved by the Council (a template is appended in order to provide a guide for the plan's completion).

7.2 the Employment and Skills Plan shall include arrangements setting out how the Owner and to the extent they are not the same person any developer or Occupier and their contractors will work directly with local employment/training agencies as part of an employment and training consortium including but not limited to:

7.2.1 Jobcentre Plus and the Skills Funding Agency; and

7.2.2 Voluntary and private sectors providers; and

7.2.3 Sixth form colleges; colleges of further education; and universities

- 7.3 The Employment and Skills Plan shall specify the provision for training opportunities and other initiatives in respect of the vocational and employability skills required by the Owners/developer, their contractors and future occupiers, for any new jobs and business opportunities created by the Development.
- 7.4 Following approval of the Employment and Skills Plan by the Council the Owner will Commence and where necessary procure Commencement and promote the objectives of the approved plan and ensure that so far as is reasonably practicable the objectives are met.
- 7.5 As part of the Employment and Skills Plan the Owner may be required to provide financial contributions to the Council to cover specific reasonable costs reasonably incurred by the Council in the implementation of the Employment and Skills Plan. The Plan shall set out the matters on which expenditure may be incurred together with the timings for such expenditure and the trigger for these payments

8. **SUDS**

8 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

- 8.1 To design the SUDS Scheme in accordance with the CIRIA c697-SUDS Manual or any equivalent and updated national design guidance as it may become available.
- 8.2 To obtain all necessary statutory consents (including reserved matters approval) for the SUDS scheme and to confirm that the design of the SUDS Scheme is such that the Environment Agency is satisfied with the adequacy of the SUDS Scheme to serve the Development. To agree in writing with the Council prior to Commencement of Development the following:

- The extent of the SUDS Scheme necessary to serve the Development and an indicative programme together with illustrative drawings for the comprehensive delivery of the SUDS Scheme; and

- A maintenance regime document for the SUDS Scheme to ensure its correct functioning and operation.

- 8.3 To ensure that the SUDS Scheme designed for the Development shall be so designed as to attenuate flows on the Site so as not to exceed the calculated greenfield run-off rate (Q_{bar}) from the Site as agreed by the Local Planning Authority
- 8.4 To design the SUDS Scheme to incorporate long-term volume storage in addition to the restricted discharge rates as agreed under paragraph 9.3 of this part 9 of the Second Schedule above such long-term volume storage to be calculated based on the difference between the calculated run-off for a 1 in 100 year 6 hour event from:
(i) the Site following completion of the Development; and (ii) the Site prior to Commencement of Development.
- 8.5 To provide to the Council prior to Commencement of Development the design of the SUDS Scheme serving the Development including the provision of features necessary within the Development and without prejudice to the generality thereof (*inter alia*);
- (a) A hydrology report to include the anticipated frequency of flooding events for each SUDS Scheme feature serving the Development;
 - (b) All relevant drawings and design calculations; and
 - (c) A copy of the consents and evidence referred to in paragraph 9.2 of this part 9 of the Second Schedule above.

together with such other information as shall be reasonably requested in respect of the SUDS Scheme serving the Development to enable the Council to be satisfied that the SUDS Scheme will be fit for purpose.

- 8.6 To agree in writing with the Council prior to Commencement of Development the designs for the SUDS Scheme together with a programme for its construction delivery and maintenance including any part of the SUDS Scheme outside the Development necessary for the adequate functioning of the SUDS Scheme.
- 8.7 To construct the SUDS Scheme agreed in paragraph 9.6 of this Part of the Second Schedule for the Development in accordance with the approved design and the programme agreed in accordance with paragraph 9.6 of this Part of the Second Schedule

8.8 Not to Occupy any Residential Unit within the Development unless and until the SUDS scheme within the Open Space Land has been constructed and is ready for use in accordance with the provisions of this paragraph 9 of this Part of the Second Schedule (and not by way of limitation the programme theretofor referred to in paragraph 9.6 above).

8.8.1 To maintain the SUDS Scheme in accordance with the maintenance regime to be agreed in paragraph 8.6 of this Part of the Second Schedule.

8.9 To provide to the Council a bond ("Bond") in a form agreed in writing by the Council (such agreement not to be unreasonably withheld or delayed) for a total sum made up of: (i) the cost of provision of the SUDS scheme and (ii) 10% thereof. The cost having been agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed). The Bond to be issued by a clearing bank or other institution approved by the Council (such approval not to be unreasonably withheld or delayed) (hereinafter called "the Surety"). The Bond shall be to the effect that:

If the Owner shall fail to perform any of the provisions herein contained in this Part of the Second Schedule on its part to be performed or observed or shall be adjudicated bankrupt or (except for the purpose of reconstruction or amalgamation) shall go into liquidation voluntarily (unless a solvent liquidation for the purpose of amalgamation or reconstruction) or otherwise or shall execute a deed of assignment for the benefit of or otherwise compound with its the Council may without prejudice to its other rights remedies and powers against the Owner for such non-performance or non-observance carry out complete and/or implement the SUDS scheme in accordance with the said provisions of this paragraph 9 of this part 9 of the Second Schedule and the Surety will pay the Council a sum equivalent to any reasonable expenditure which the Council may properly incur in carrying out completing and/or implementing the SUDS scheme and the said provisions and also any sums of money relating to the SUDS scheme referred to in this Deed and the Council's legal costs incurred in implementing the terms of this Deed relating to the SUDS scheme for which sum (being the sum agreed for the cost of provision of the SUDS scheme together with 10% thereof) the Surety binds itself and its successors and assigns to the Council.

Such SUDS scheme bond to be provided prior to Occupation of any Residential Unit within the Development and to endure until the SUDS scheme is adopted or the Council agrees in writing to the bond term being a fixed period and renewed at the end of the agreed fixed period until such time as the SUDS scheme is adopted.

9. **Travel Plan**

9 The Owner hereby covenants with the Council as set out in this Part of the Second Schedule as follows:-

- 9.1 Prior to Commencement of the Residential Development to prepare and submit a draft of the Full Residential Travel Plan to the Council for approval consistent with the County Council's guidance "A Guide to Development Related Travel Plans dated January 2009" (or amendment replacement or variation thereof);
- 9.2 Not to Occupy any part of the Development until the Travel Plan Monitoring Fee has been paid to the Council
- 9.3 Not to Occupy the Residential Development unless and until the Full Residential Travel Plan has been approved in writing by the Council
- 9.4 Not to amend the Full Residential Travel Plan without the prior written approval of the Council
- 9.5 Not to use the Development otherwise than in accordance with the approved Travel Plan (including any approved amendments to them)

THIRD SCHEDULE

Council's Covenants

Repayment of contributions

- 1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 2 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed in accordance with the provisions of this Deed

Discharge of obligations

- 3 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF THE COUNCIL)
OF THE BOROUGH OF HAVANT)
was affixed in the presence of:)
Authorised Signa [REDACTED])



EXECUTED as a deed by HAYLING ISLAND)

BUILDERS LIMITED acting by two of its
ARTHUR VIVIAN GORSE a
~~directors or by its secretary and one of its~~
directors *15c (reserve of: -*



Director: [REDACTED])

Director/Secretary [REDACTED])

APPENDIX 1

Employment and Skills Template

Site

Landowner/developer

Planning application number

This document forms the developer's response to sections XX of the Section 106 Agreement between XX and XX dated XX.

Development

Please give a brief description of the proposed development including identifying what is being built, the estimated construction cost, the start date, the period of construction and what the end use(s) of the development will be.

Opportunities

Please state the approximate number and type of jobs that will be created during the construction stage of the development. Please provide a copy of the labour forecasting tool if available.

Contact details

Please provide full contact details for the developer's project team.

Delivery

Please complete the employment and skills matrix at the end of this document with details of the following employment and training measures that will be provided for local people during the construction phase of the development.

Please provide any other relevant information to support the employment and skills plan.

- Recruitment through Jobcentre Plus and other local employment vehicles
- Work trials and interview guarantees
- Pre-employment training
- Apprenticeships
- Vocational training (NVQ)
- Work experience (14-16 years, 16-19 years and 19+ years)
- School, college and university site visits
- Construction Skills Certification Scheme (CSCS) cards
- Supervisor training
- Leadership and management training
- Support with transport, childcare and work equipment
- Any further details of in-house training schemes

Please complete the employment and skills matrix at the end of this document with details of the following employment and training measures that will be provided for local people during the occupation phase of the development.

Please provide any other relevant information to support the employment and skills plan.

- Recruitment through Jobcentre Plus and other local employment vehicles
- Work trials and interview guarantees
- Pre-employment training
- Apprenticeships
- Vocational training (NVQ)
- Work experience (14-16 years, 16-19 years and 19+ years)
- School, college and university site visits
- Construction Skills Certification Scheme (CSCS) cards
- Supervisor training
- Leadership and management training
- Support with transport, childcare and work equipment
- Any further details of in-house training schemes

Monitoring

Please provide details on how the Employment and Skills Plan will be monitored.

Employment and Skills Matrix



Havant
BOROUGH COUNCIL

Cleaner, Safer,
More Prosperous

Category	NSAFC-CBA benchmark	Activity	Number of people	Supervision	Dates	Notes
Work placement (14-16 years)						
Work placement (16-19 years)						
Work placement (19+ years)						
Curriculum support activities – individual engagement						
Graduates - persons						

Apprentice starts – persons						
Existing apprentices – persons						
Apprentice completions – persons						
Jobs advertised through local employment vehicles – number						
NVQ starts for sub-contractors						
NVQ completions for sub-contractors						
Training plans for sub-contractors – number						
Supervisor training for sub-contractors – persons						
Leadership and management training for sub-contractors – persons						
Advanced health and safety training for sub-contractors – persons						
Construction Skills Certification Scheme (CSCS) cards	n/a					
Support with transport, childcare and work equipment	n/a					

Recruitment through Jobcentre Plus	n/a					
Recruitment through other local employment vehicles	n/a					
Work trials and interview guarantees	n/a					
Pre-employment training	n/a					
In-house training schemes	n/a					

Appendix 2

Plans

Plan 1	Site Location Plan drawing reference CSa/218/115
Plan 2	Proposed Footway Improvements drawing reference TSP/HB/P2415/07 A

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Open Space /
attenuation
area.

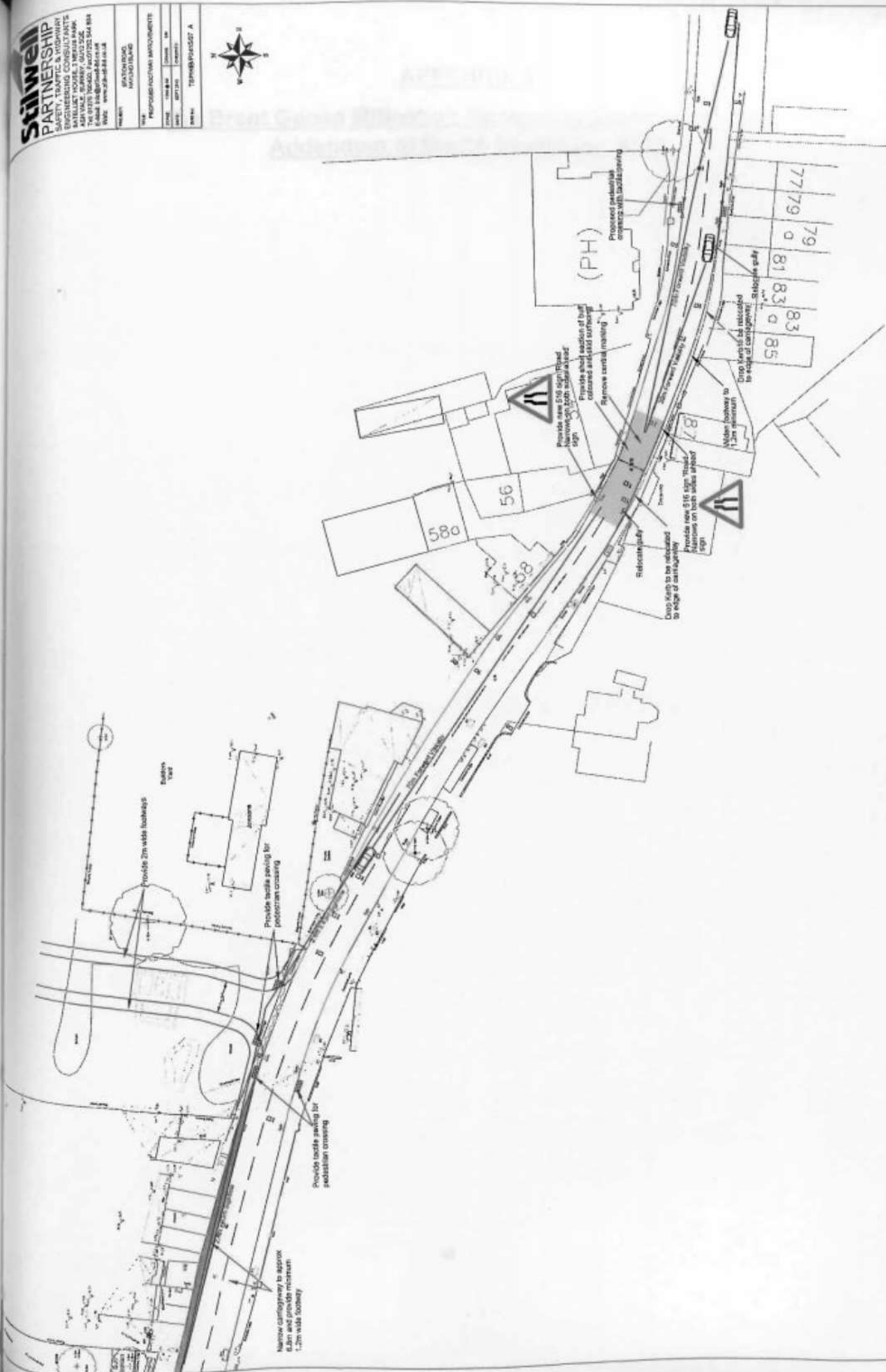
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Project Station Road, Hayling Island
Title Site Location Plan
Client Hayling Island Builders Limited

Date November 2013
Scale @ Size 1:2500 @ A4
Drawn DP Checked CS

Drawing Number CSa/2128/115
Revision -

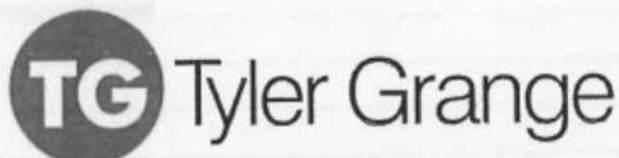


APPENDIX 3

the Brent Goose Mitigation Strategy as amended by the
Addendum of the 19 November 2013

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Appendices

Appendix 1: Wetland and Breeding Sites	11 September 2013
Appendix 2: Natural England letter dated 20 July 2013	

Plans

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Compensation for Loss of Breeding	11 September 2013

Land off Station Road,
Hayling Island

Brent Goose Mitigation Strategy

Report Number: 1435_2011_R03b_JA_RW

Author: Julian Arthur MCIEEM CENV

Checked by: Laura Sanderson MCIEEM CENV



Land off Station Road, Hayling Island
11 September 2013

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Appendices

Appendix 1: Waders and Brent Goose Strategy Sites

Appendix 2: Natural England letter dated 30 July 2013

Plans

Habitat Features

1435/P01a September 2013 JSA/JTF

Compensation for Loss of Brent Goose Habitat

1435/P02 September 2013 JSA/JTF

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Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_2011_R03b 11 September 2013 JA_RW

Section 1: Introduction

- 1.1 This mitigation strategy has been prepared by Tyler Grange LLP on behalf of Hayling Island Builders Ltd in respect of Land off Station Road, Hayling Island, Havant ('the site').

Background and Need for Mitigation

- 1.2 In June 2013 Tyler Grange LLP prepared an ecological assessment report (ref. 1435_R02a) that was submitted with an outline application for mixed use (residential and employment) development at the site. This report confirmed that a key issue with respect to future development is the potential for adverse effects through habitat loss and increased disturbance affecting the bird interest of the nearby Solent and Southampton Water Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Ramsar site. The SPA is designated on account of the internationally important numbers of dark bellied Brent geese *Branta bernicla bernicla* and some wading bird species. The birds use the adjacent grassland to forage and roost at high tide.
- 1.3 The ecological assessment was informed by data searches and winter bird surveys in 2011/12 and 2012/13 to determine whether the site (which is the southern part of field H34E, as identified in the Waders and Brent Goose Strategy; Ref. 1. Also see **Appendix 1**) and adjacent fields (H34C and H34D) were used by Brent geese. The surveys did not identify any Brent geese using the site or in the remainder of H34E. At a meeting at Havant Borough Council attended by Natural England and Hampshire County Council's ecologist on 25th April 2013, it was agreed that this was sufficient evidence to assume that there would not be an impact to Brent geese and hence the SPA/Ramsar site as a result of habitat loss. It was agreed however that impacts arising from an increase in recreational use would need to be addressed.
- 1.4 Subsequently, new anecdotal evidence came to light that demonstrates that the site and the rest of H34E is in fact used by Brent geese and wading birds for which the SPA/Ramsar is notified:
- 70 Brent geese recorded in 2007/8;
 - 200 Brent geese recorded on two occasions in 2011/12; and
 - Up to 30 lapwing *Vanellus vanellus*.
- 1.5 It is understood this evidence was obtained by a neighbour of the site, who monitors the site on a regular basis.
- 1.6 The survey technique employed by Tyler Grange (which was in accordance with a method stipulated in adopted guidance; Ref. 1) is a sampling technique based on two visits per month during the winter season, and with this method there is the possibility that geese could be missed at other times (a risk acknowledged by Hampshire County Council's ecologist). This appears to have been the case in the 2011/12 survey where no geese were recorded using H34E.
- 1.7 As a direct consequence of this new evidence, Natural England, RSPB and Hampshire Wildlife Trust objected to the application, on the grounds that there was insufficient survey data submitted with the application (a third winter season of winter surveys being required to confirm the status of the site) to determine whether the development could result in loss of suitable grazing habitat for the geese, and hence whether an impact to the SPA and Ramsar site could occur. Hampshire County Council's ecologist recommended additional bird survey work prior to determination of the application to assess the need for mitigation.



1.8 Objections were also raised in respect of the lack of certainty at this time relating to mitigation of recreation effects on the geese.

1.9 The objections were discussed at a meeting on 15th August 2013 at Havant Borough Council attended by Natural England and Hampshire County Council's ecologist. At that meeting it was agreed that:

- Given there is already evidence of use of the site by Brent geese and waders, there was little point undertaking a third season of wintering bird surveys in 2013/14;
- Instead, and in line with the alternative proposed by Natural England in their letter dated 30th July 2013 (see **Appendix 2**), it was accepted that an avoidance/compensation strategy was necessary and should be produced to avoid a net loss of SPA supporting habitat;
- The principles of a compensation strategy were discussed and agreed, as was a mechanism for monitoring and management to ensure mitigation is provided in perpetuity; and
- The application would not be determined until the mechanism for delivery of the strategy to address the potential effects associated with increased recreational use as a result of development has been established. This would be controlled by a S106 agreement (refer to further details in Tyler Grange report ref. 1435_R02a).

Scope of Report

1.10 This report:

- Describes a strategy to compensate for loss of foraging habitat to ensure there is no impact to the integrity of the SPA and Ramsar; and
- Describes the principles of a management and monitoring strategy, and the mechanism for controlling it.

1.11 For the reasons stated in paragraph 1.9 4th bullet this report does not contain any further detail in respect of potential effects of increased recreational disturbance.

1.12 This strategy has been agreed by both Simon Thompson of Natural England and Tristan Norton of Hampshire County Council.



Section 2: Compensation for Loss of Foraging Habitat

Overview

- 2.1. The proposed development would result in the loss of 2.5ha of arable land within field H34E, which covers a total of c. 9.7ha. The remainder of H34E will continue to be farmed as it is now, and hence is likely to be used by geese, albeit potentially in smaller numbers.
- 2.2. As with other fields on Hayling, the field is farmed on a rotation of cereals and legumes on alternate years. Consequently, the field is only attractive to geese in alternate years when cereals are present in winter, providing young growth upon which the geese can feed. In other years H34E supports stubble in winter (as was in case in winter 2012/13) and is not used by geese.
- 2.3. The developer controls H34D (adjacent and to the north) and part of H34C (to the west of Hayling Billy Trail; see **Appendix 1**).
- 2.4. To compensate for loss of 2.5ha of H34E it has been agreed that:
 - 1.5ha of H34D would be enhanced such that it is more attractive to geese and waders that use H34E; and
 - Disturbance from recreational use as a result of uncontrolled access from the Hayling Billy Trail on to H34C will be reduced, thereby making it more attractive to geese and waders.
- 2.5. The principles of the strategy are illustrated on **Plan 1435/P02**, and are described in detail below.

Enhancement of H34D for Geese

Existing Ecological Resources

- 2.6. The existing habitats within H34D are illustrated on **Plan 1435/P01a**.
- 2.7. H34D is not subject of statutory or non-statutory protection. It is a level field supporting horse paddocks (plate 1). To the north and east is residential housing, to the south is H34E and to the west is the Hayling Billy Trail and beyond, H34C.
- 2.8. H34D is subdivided into smaller compartments by wire fencing. The grassland sward is close-grazed and species-poor being dominated by perennial rye-grass *Lolium perenne*, crested dog's-tail *Cynosurus cristatus*, bent grasses *Agrostis* sp., and sweet vernal-grass *Anthoxanthum odoratum*, with forbs rarely present.





Plate 1. H34D is a close-grazed horse paddock

- 2.9. H34D is bounded to the west by a mature hedgerow with trees alongside the Hayling Billy Trail. To the south is a defunct species-poor hedge (plate 2). Woody vegetation comprises primarily of bramble *Rubus fruticosus*, with some elm *Ulmus procera*, blackthorn *Prunus spinosa*, and with two mature oak trees. Dumped timber and brashings are also present. There is a ditch that was dry at the time of survey and supports no wetland vegetation. Woodland ground flora was not recorded, the hedgerow base and uncultivated margins supporting species typical of disturbed and nutrient enriched conditions such as coarse grasses namely false oat-grass *Arrhenatherum elatius*, cock's-foot *Dactylis glomerata*, nettle *Urtica dioica*, bracken *Pteridium aquilinum* and broad-leaved dock *Rumex obtusifolius*. Further east the southern boundary is more established and mature (this would not be affected).



Plate 2. Hedgerow on southern boundary of H34D is species-poor, gappy and defunct

- 2.10. H34D supports grassland that could support feeding geese in winter, however, the field is too small, enclosed by hedges and is grazed by horses. All these factors make it unsuitable for geese. This is reflected in the lack of records of geese for H34D.

- 2.11. H34D does occasionally support small numbers of waders, with use restricted no doubt for similar reasons as described for geese above. The Tyler Grange surveys confirmed 10 lapwing on one occasion only in the 2011/12 survey, but not at any other time. Hampshire Biodiversity Information Centre (HBIC) confirmed a maximum count of 7 lapwing in the 2010 strategy.
- 2.12. For the same reasons as described for the proposed development site, it is unlikely that H34D is of importance to other fauna. In summary:
- The hedgerows are likely to support nesting birds, though that to the south is unlikely to be of importance owing to its gappy and defunct nature;
 - The rough grassland adjacent to the hedgerows is likely to support common reptiles, though a large population would not be expected;
 - No evidence of badgers was recorded;
 - The hedgerows are likely to support nesting birds, though that to the south is unlikely to be of importance owing to its gappy and defunct nature;
 - Owing to the nature of the habitats present, notable invertebrate species would not be expected; and
 - Bats would be expected to use the site boundaries for commuting and occasional foraging. The mature and semi-mature oak trees at the boundaries could support roosting bats, though the younger trees on the southern boundary would not support roosts.

Evaluation

- 2.13. The horse grazed grassland is a common and widespread habitat. It is intensively managed and species-poor. It is considered to be of **negligible value**.
- 2.14. The defunct boundary hedge to south west is also of **negligible value**, though the semi-mature oak trees are of **site value** being not replaceable in the medium term, and of supporting value to a range of fauna.
- 2.15. H34D is not of value to Brent geese currently, and of no more than **local value** to wintering lapwing.
- 2.16. Owing to the nature of the habitats, H34D would not be expected to be of value to other fauna.

Proposed Enhancement for Geese and Waders

- 2.17. The suitability of sites for Brent geese depends on distance from the coast, the size of the grazing area, the type of grassland management, visibility and disturbance. Brent geese prefer large open sites where they have clear sight lines (in order to best avoid predation) and short lush grass for grazing (ref. 1).
- 2.18. The reasons for which H34D is not currently used by geese, or waders in greater numbers than have been recorded, are considered to be as follows:
- Relative to other fields that are known to be of value to geese and waders (see **Appendix 1**), H34D is small and enclosed by hedges and fencing, with poor visibility;
 - Whilst there is no public access, the fields are horse-grazed and hence disturbed; and
 - The grassland is close grazed by horses and potentially less attractive than other lush growth available in the area in winter.



2.19. Brent geese are long-lived and known to exhibit faithfulness to their wintering grounds. Given it is adjacent to H34E, which is known to be used by Brent geese, compensation for loss of habitat by effectively including 1.5ha of H34D within the same enclosure as H34E is considered likely to be successful.

2.20. The following is proposed to compensate for the loss of 2.5ha of H34E:

- Removal of the defunct hedgerow on the south-west boundary between H34D and H34E, with scrub and tall, coarse grasses cut to ground level to improve sight lines for birds. The two oak semi-mature trees would be retained, though this is not likely to significantly affect the use of the field by birds. The existing ditch would also be retained – this too is not likely to affect the use of H34D by birds (a similar situation exists in H34E where a ditch bisects the field; refer to plan 1435/P01a); and
- Reversion of the horse paddock of negligible value to arable use, to be farmed in the same manner as the remainder of H34E. This will make it attractive to foraging geese when used for winter cereals. It would also make it more attractive to waders such as lapwing.

Potential Effects of Works to H34D to Valued or Protected Resources, and Mitigation

Habitats

- 2.21. Mitigation for reversion of the horse paddocks of negligible value to arable use is not considered necessary.
- 2.22. Similarly, removal of the defunct hedgerow should not require compensation, though it will be necessary to ensure the retained oak trees are not harmed during clearance and subsequent farming of the surrounding land.
- 2.23. The proposed development includes a wide buffer of woody planting on its northern boundary (see **Appendix 3**). This could comprise hedgerow planting using native species, with a woodland 'ecotone' habitat comprising of a transition from hedgerow to scrub and rough grassland. This habitat is of value to invertebrates, birds, reptiles and small mammals. It would more than off-set habitat losses elsewhere.

Fauna

- 2.24. All native wild birds are protected under the Wildlife and Countryside Act (WCA) 1981 (as amended) whilst nesting. Clearance of hedgerow and scrub would be timed to avoid the bird nesting season, or else it would be preceded by a survey to confirm disturbance would not occur.
- 2.25. No features likely to support roosting bats would be affected by development. With the retention of the ditch, bat commuting routes in the event they exist should not be affected.
- 2.26. All native reptiles are protected from harm under the WCA 1981. Prior to construction, the grassland could be subject of phased strimming (one cut to 15cm, followed by a second cut to ground level a few days later in suitable weather) to encourage slow-worm into adjacent habitat, out of harm's way.

Other

- 2.27. No specific mitigation in respect of badger, amphibians or invertebrates is required.



- 2.28. The proposals in respect of reptiles will also protect hedgehog, if present.

Reduce Recreational Disturbance in H34C

Existing Situation

- 2.29. During winter surveys it was evident that H34C, which is adjacent and to the west of the site/H34E, is regularly used by dog walkers and other walkers as it is a short cut from the Hayling Billy Trail to the coast path. There are desire lines around the boundaries of this field (see plan 1435/P01a and plate 3), though the only formal footpath is along the western boundary with the adjacent harbour. Access elsewhere to these desire lines is via holes that have been created in the fence.



Plate 3. Desire line on the eastern margin of H34C, accessed via a number of gaps made in the fence

- 2.30. H34C is farmed on the same rotation as H34E. It is identified as a Sites of Interest for Nature Conservation (SINC) on account of its value to Brent geese, with 66 recorded using the field according to HBIC data, and a maximum of c.500 recorded at the north end of the field in Tyler Grange surveys in 2011/12 (refer to report 1435/R02a). 139 golden plover were recorded on one occasion, together with one lapwing. During surveys birds were seen to be flushed from the field on to the adjacent harbour by dog walkers. The southern part of the field was not found to support Brent geese or waders on any of the survey visits.
- 2.31. At 12.4ha, H34C is a large field, and comparable in size to other fields of importance to Brent geese and waders. It is likely that disturbance is a factor in the extent of use of H34C by Brent geese and waders, and hence its value in supporting the population in this location, though it is possible that the southern and central part of the field is too enclosed with insufficiently long sight lines to be suitable for Brent geese.

Proposed Works to Reduce Disturbance

- 2.32. The developer controls the southern and eastern parts of H34C, including the boundary along the Hayling Billy Trail where there are desire lines and gaps created in the fence. It is proposed to reinstate the fence to prevent dog walkers and the walkers using the southern and eastern boundaries of the field. This should reduce disturbance at least to the eastern and southern parts

of H34C and should make it more attractive to foraging birds. Use of the footpath on the western boundary of H34C with the adjacent harbour would not be affected, and hence use of this path, and concomitant disturbance to birds, is not likely to be changed.

Timing of Delivery

- 2.33. The timing of the provision of the compensatory habitat in H34D and control of access to H34C was discussed with Natural England and Hampshire County Council's ecologist. The objective should be to ensure that there is no net loss in availability of winter foraging.
- 2.34. H34C and H34E are farmed on the same rotation such that they are only suitable for foraging Brent geese in alternate years i.e. when there is winter wheat rather than stubble during the winter months. The next winter wheat crop is due to be sown in winter 2013/14. With the likely planning timetable, there would be no construction until after this period. It was agreed that works to H34D and H34C would therefore not need to occur until prior to the 2015/16 winter season, when winter wheat is again sown and habitat loss likely to cause an impact to the geese.



Section 3: Management and Monitoring

- 3.1. In order to ensure that the compensatory measures are secured for the duration of the development (i.e. in perpetuity) it will be necessary for them to be controlled by a management and monitoring plan. The heads of terms of a management and monitoring strategy are described in Table 1 below. It is envisaged that the preparation of a full management and monitoring plan would be controlled by planning condition, with its implementation secured by planning obligation.

Objective	Proposed Action	Timing
Ensure HMA is secured in such a way that it supports suitable habitat for target species and waters	Form HMA in some relation to HMA and HMA, with suitable in relation to	In long term
Maintain clear, open light from between roads and HMA	Vegetation along the related ditch and similarly to ground level in relation	Annual
Ensure access from Hayling Ditch to the HMA	Ensure paths and not overgrown, which would provide management to the HMA. The ditch should be kept in a suitable condition in relation to the HMA and not overgrown, which would provide management to the HMA.	Annual
Monitor efficacy of mitigation	Understand up to 10 years of monitoring the HMA, including all related and only in part which should be carried out in relation to the HMA and not overgrown, which would provide management to the HMA.	Continuous

Table 1: Heads of terms of management and monitoring plan

Objective	Prescription	Timing	Responsibility
Ensure H34D is farmed in such a way that it supports suitable habitat for foraging geese and waders	Farm H34D on same rotation as H34E and H34C, with cereals in alternate years	In line with usual farming practice	Farmer
Maintain clear, open sight lines between H34D and H34E	Vegetation along the retained ditch cut annually to ground level in autumn	Annually in September	Farmer
Control access from Hayling Billy trail into H34C	Ensure paths are not recreated, which would increase disturbance to birds. The fence should therefore be checked annually in autumn, before geese arrive, and if necessary repaired.	Annually in September	Farmer
Monitor efficacy of mitigation	Undertake up to 3 winters of monitoring surveys post completion of mitigation and only in years where winter wheat present; if numbers equivalent or greater in year 1 or 2 then stop monitoring	October to March; 2 visits per month	Developer/ecologist

Table 1. Heads of terms of management and monitoring plan



Section 4: Summary and Conclusion

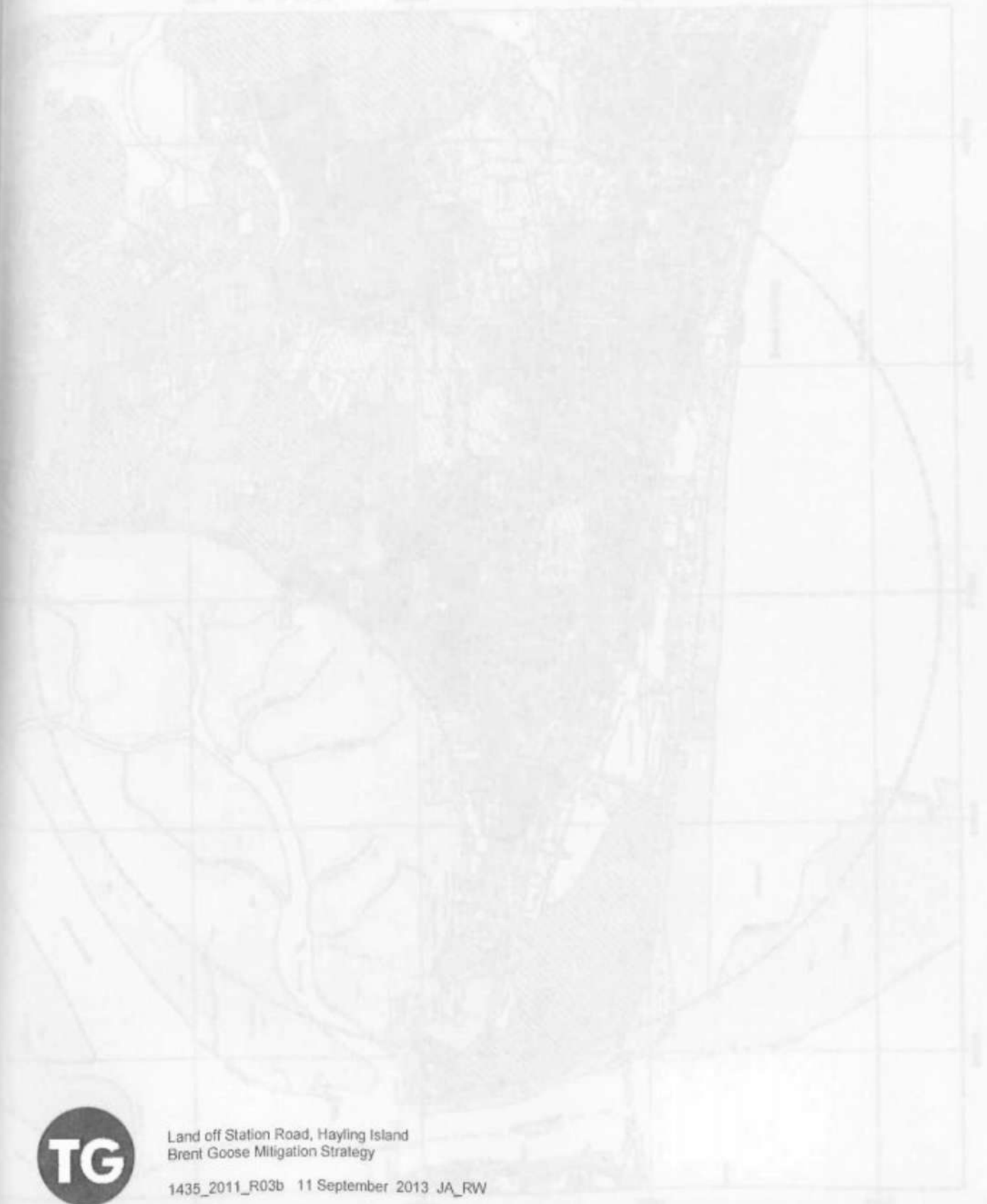
- 4.1. Anecdotal evidence that has come to light since the application for development of the site had been submitted suggests that the site is indeed used by foraging Brent geese and some waders during the winter months, when there is winter wheat present. A strategy to compensate for loss of 2.5ha of foraging habitat for Brent geese as a result of development of the site and hence avoid impacts has therefore been agreed with Natural England and Hampshire County Council's ecologist. The strategy comprises a combination of:
- Enhancement of 1.5ha of H34D, which is adjacent to H34E and currently not used by geese, such that it is more attractive to geese and waders that use H34E; and
 - Reducing existing disturbance from recreational use as a result of uncontrolled access from the Hayling Billy Trail on to H34C, thereby making it more attractive to geese and waders.
- 4.2. The delivery of mitigation would be timed to ensure that there is no net loss of foraging for Brent geese and waders. A strategy to avoid impacts to nesting birds and reptiles, if present, during enhancement works to H34D is described.
- 4.3. The principles of a management and monitoring strategy have been agreed to ensure that the mitigation is available in perpetuity.
- 4.4. An appropriate mechanism for controlling delivery of the mitigation and enhancement strategy would involve the use of planning conditions and obligations to secure:
- The implementation of the mitigation works to H34C and H34D;
 - A full management and monitoring plan to be agreed with Natural England and the planning authority; and
 - Implementation of the management and monitoring plan in perpetuity.
- 4.5. In conclusion, with the implementation of the mitigation strategy, the proposed development would be in conformity with legislation that protects the SPA and Ramsar sites (Conservation of Habitats and Species Regulations 2010). In so doing, it would also be in conformity with planning policy that seeks to protect such sites. Hampshire County Council's ecologist has confirmed that with this strategy, which avoids likely significant effects, a full Habitats Regulations Assessment under Regulations 61(1) of the aforementioned Regulations would not be necessary.

Reference

- 1 King, D. (2010) *Solent Waders and Brent Goose Strategy 2010*. Hampshire and Isle of Wight Wildlife Trust.



Appendix 1: Waders and Brent Goose Strategy Sites



Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_2011_R03b 11 September 2013 JA_RW

Waders and Brent Goose Strategy
sites within 2km of 'Land between
Furniss Way & Dancers Way,
Hayling Island' (SZ710997):

Legend

Search Area

Wader & Brent Geese Sites (labelled cream)

Supposed for 2010 strategy without positive results.

Brent in 2010 strategy

Viewers in 2010 strategy

Whereas and Brent in 2010 strategy

Passive records from 2002 strategy only

Created: 20/03/2013
Scale at A3: 1:16,000

0	137.5	275	550	825	1,100
					Meters

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Doc Ref: 20 July 2013
Doc Ref: 21797
Doc Ref: 21797

Appendix 2: Natural England letter dated 30th July 2013

Mrs D Haywood
Worland Borough Council

Executive Director
Worland Council
Civic Centre
100 High Street
Worland
West Sussex
BN11 1AA

Tel: 01243 810000

By email only, no hard copy to follow

Dear Mrs Haywood,

**LANGSTONE HARBOUR SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI)
CHICHESTER AND LANGSTONE HARBOUR SPECIAL PROTECTION AREA (SPA)
SOLENT MARITIME SPECIAL AREA OF CONSERVATION (SAC)**

Proposal: Outline planning permission for mixed-use development comprising up to 50 dwellings and 1,200sqm of light industrial accommodation (Use Class B1).
Location: Land north of Station Road/East of Furness Way, West Town, Hayling Island

Thank you for your letter dated 10 July 2013 requesting Natural England's comments on the above proposal.

The Conservation of Habitats and Species Regulations 2010 (as amended)
The application site is within approximately 250m of habitats which form part of the Langstone Harbour Site of Special Scientific Interest (SSSI). The SSSI is part of the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA) and is a Wetland of International Importance under the Ramsar Convention (Standard Site). This letter complies with statutory consultation requirements under provisions of Article 13 of the Town and Country Planning (General Development Procedure) Order 1995 and Section 28 of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended).

Recreational Disturbance
Following the South East Plan allocation of around 57,000 housing between 2007 and 2020, across the Solent, with many large allocations having been cleared forward into accepted Local Authority LDFs, concerns were raised about the potential impact of recreational disturbance on bird populations in the three SPAs that cover the majority of the Solent coast. In response to this, the Solent Forum commissioned Ecological Ecology to undertake the Solent Mitigation and Disturbance Project (SDMP), to assess the current and future levels of recreational activity in the Solent and to quantify the predicted impacts on bird populations. Natural England is on the project Steering Group for the project and also has a statutory role in advising on the potential effects of development on the conservation of SPAs. In February 2012, Phase 1 of the SDMP, which specifically assessed and modelled bird disturbance and noise data, was completed and presented to the Solent Forum and Natural England.

In summary, this work concluded the following:

There is a high number of current recreational visits to the three SPAs and predicted



Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_2011_R03b 11 September JA_RW

Date: 30 July 2013
Our ref: 91767
Your ref: APP/13/00639

NATURAL
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CW1 6GJ

T 0300 060 3900

By email only, no hard copy to follow

Dear Mrs Haywood,

**LANGSTONE HARBOUR SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI)
CHICHESTER AND LANGSTONE HARBOURS SPECIAL PROTECTION AREA (SPA)/Ramsar
SOLENT MARITIME SPECIAL AREA OF CONSERVATION (SAC)**

Proposal: Outline planning permission for mixed-use development comprising up to 60 dwellings and 1,250sqm of light-industrial accommodation (Use Class B1).

Location: Land north of Station Road/East of Furniss Way, West Town, Hayling Island

Thank you for your letter dated 10 July 2013 requesting Natural England's comments on the above proposal.

The Conservation of Habitats and Species Regulations 2010 (as amended)

The application site is within approximately 350m of habitats which form part of the Langstone Harbour Site of Special Scientific Interest (SSSI). This SSSI is part of the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA) and is a Wetland of International Importance under the Ramsar Convention (Ramsar Site). This letter comprises our statutory consultation response under provisions of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995 and Section 28 of the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended).

Recreational Disturbance

Following the South East Plan allocation of around 82,000 houses between 2006 and 2026, across the Solent, with many large allocations having been carried forward into adopted Local Authority LDFs, concerns were raised about the potential impact of recreational disturbance on bird populations in the three SPAs that cover the majority of the Solent coast. In response to this, the Solent Forum commissioned Footprint Ecology to undertake the Solent Mitigation and Disturbance Project (SDMP), to assess the current and future levels of recreational activity in the Solent and to model the predicted impacts on bird populations. Natural England is on the project Steering Group for this project and also has a statutory role in advising on the potential effects of development on the conservation of SPAs. In February 2012, Phase 2 of the SDMP, which specifically assessed and modelled bird disturbance and visitor data, was concluded and presented to the Solent Forum and Natural England.

In summary, this work concluded the following:

- There is a high number of current recreational visits to the three SPAs and modelled future increase in visits is also high.

- Lower bird densities were observed at sites that have greater recreational disturbance events.
- The model estimated a high percentage area of intertidal subject to recreational disturbance.
- There was a significant correlation between visitor numbers and housing numbers near the coast (in bands within 5km).
- In Southampton Water, the model suggested that current levels of disturbance had a depressing effect on the populations of four SPA species and that future housing scenarios would exacerbate this effect for two of these species.

Natural England's advice is that the SDMP work represents the best available scientific evidence, and therefore mitigation is required in order to avoid a likelihood of significant effect, in combination, arising from new housing development around the Solent.

We welcome the applicant's commitment to make an appropriate contribution to the mitigation scheme currently under development. However, the issue below relating to the use of the development site as SPA supporting habitat needs to be resolved prior to any such contribution being secured.

Natura 2000 site – Objection due to lack of information

Natural England objects to the above proposal on the following grounds:

- The development site is classified as uncertain by the Brent Goose and Waders Strategy, and whilst survey work has been undertaken, given the records of use that exist for the site – 70 Brent Geese 2007/8, and 200 Brent Geese on two occasions in 2011/12 - we consider that further survey effort is likely to be required. We therefore recommend that:
 - Further survey work is undertaken to ascertain the level of use of the site, we advise that a minimum of three years of survey data (total) is likely to be required; alternatively
 - An avoidance/compensation strategy is submitted setting out proposals for providing replacement habitat to avoid any loss of SPA supporting habitat.

Natural England would welcome the opportunity to discuss the above advice further with the applicant.

Under S281 of the Wildlife and Countryside Act 1981 your authority must take Natural England's advice into account in deciding whether or not to grant permission. If your authority resolves not to follow this advice then it must notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, it has taken our advice into account. You must then allow a further period of 21 days before the development can commence to allow us to consider any further action. For further details of these requirements, and a summary of the legislations protecting SSSI's and the duties which apply to planning authority, please refer to Part II of Circular 06/2005¹.

We would be happy to comment further should the need arise but if in the meantime you have any queries, please do not hesitate to contact Simon Thompson by telephone on 0300 060 4625 or by email to simon.thompson@naturalengland.org.uk

Yours sincerely

Simon Thompson
Lead Adviser
Land Use Operations Team

¹ Government Circular: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system ODPM Circular 06/2005/Defra Circular 01/2005
<http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity>

Plans

Habitat Features

1435/P01a September 2013 JSA/JTF

Compensation for Loss of Brent Goose Habitat

1435/P02 September 2013 JSA/JTF



Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

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A F1	Arable (and field reference)
------	------------------------------

Hedgerow (and reference number)

 Woodland

Wert Datum

 Dry Ditch

Rough Grassland

Mesotrophic Grassland
(and field reference)

I Improved Grassland
(and field reference)

 $\angle z$

Land between Furness Way and Dancers Way.
Hayling Island

Habitat Features

As Shown

1435/PO1a

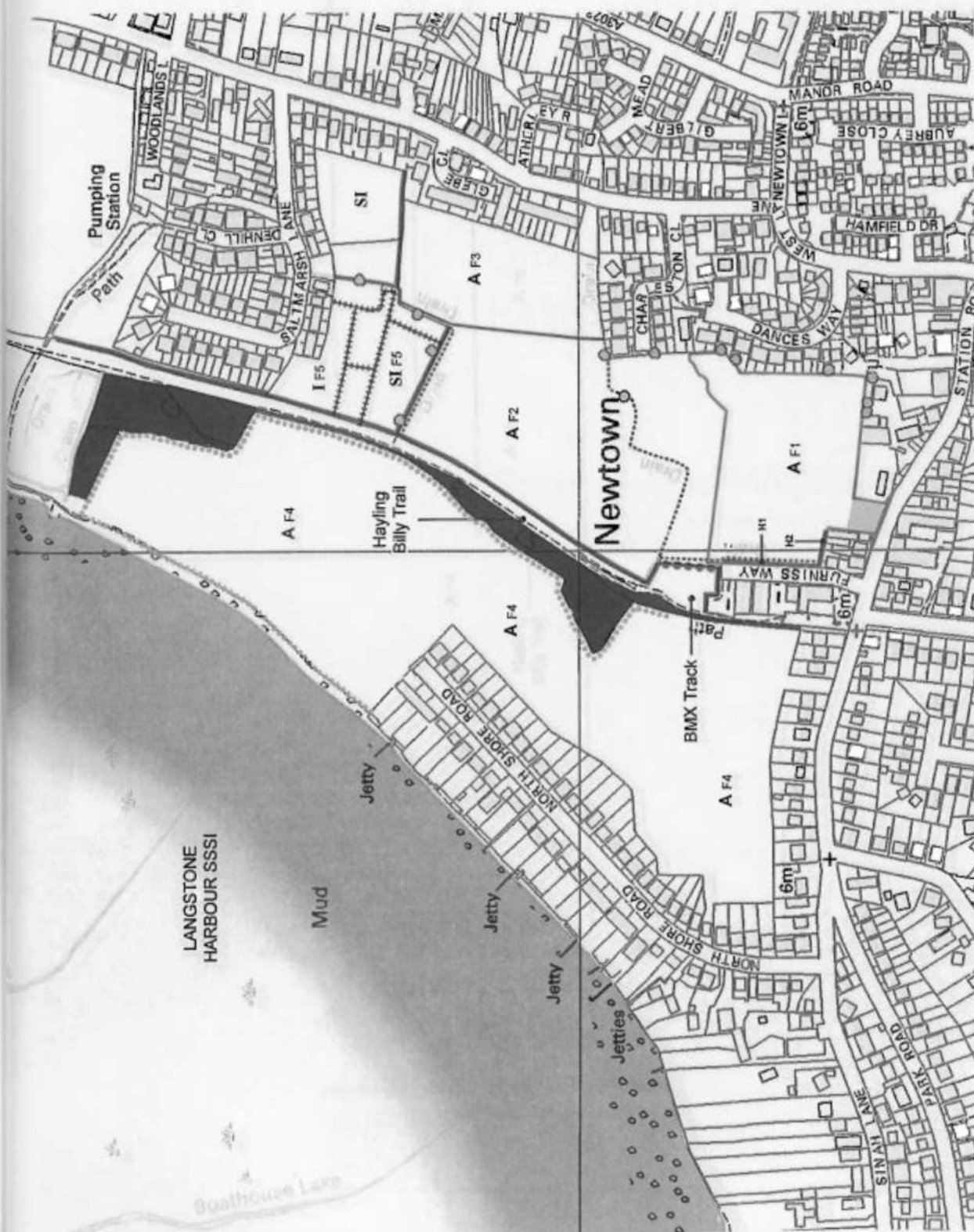
September 2013

—SANTO

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19 November 2013

Plan

Area of Great Ouse River Study Site
1435P03 - Ouse, 2013 - JSA/AT

Land off Station Road,
Hayling Island

Brent Goose Mitigation
Strategy - ADDENDUM

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Report Number: 1435_2011_R04b_JA_RW
Author: Julian Arthur MCIEEM CENV
Checked by: Laura Sanderson MCIEEM CENV



Unit 45, Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_P03_2013_19 November 2013 - JSA/AT

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Appendix

Appendix1: RSPB letter dated 7 October 2013

Plan

Area of Brent Goose Habitat likely to be Improved by Access Management
1435/P03 October 2013 JSA/JTF

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Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_2011_R04b 19 November 2013 JA_RW

Section 1: Introduction

- 1.1 This report has been prepared by Tyler Grange LLP on behalf of Hayling Island Builders Ltd in respect of Land off Station Road, Hayling Island, Havant ('the site'). It is an addendum to a mitigation strategy agreed with Natural England and Hampshire County Council to compensate for loss of Brent goose foraging habitat to ensure there is no impact to the integrity of the SPA and Ramsar as a result of proposed development of the site (Tyler Grange report ref. 1435_R03b; hereafter referred to as 'the strategy').
- 1.2 This addendum has been prepared to address concerns raised by the RSPB in its letter dated 7th October 2013 (**Appendix 1**) in respect of the strategy. The RSPB states the strategy is modified as follows (excerpt from letter in **Appendix 1**):
- *"A minimum area of 2.5ha replacement feeding habitat to be secured on open, flat land, as close as possible to the H34 network of Brent goose and wader feeding sites.*
 - *The replacement habitat to be planted with either winter cereal, oilseed rape or permanent improved grassland, to ensure that it provides a suitable replacement resource for Brent geese and waders on an annual basis.*
 - *The replacement habitat to be in place before construction of the proposed development, and managed as such in perpetuity.*
 - *Measures put in place to limit informal recreational access to the network of H34 Brent goose and wader feeding sites.*
 - *Monitoring carried out of the replacement habitat for a minimum period of 3 years, with a requirement in place for the applicant to undertake further reasonable mitigation measures should the replacement habitat prove unsuccessful."*
- 1.3 Each of the RSPB's points is considered below.
- 1.4 This addendum also takes into account points raised by Hampshire Wildlife Trust's comments in their letter dated 8th November 2013.
- 1.5 This addendum should be read in conjunction with the strategy.

Area of Replacement Habitat

- 1.6 The area of H34E that would be removed from the foraging resource for Brent geese is 2.5ha (i.e. the area of the development footprint). The strategy states that 1.5ha of land at H34E would be made more suitable for Brent geese to compensate for these losses. This does not compensate like-for-like in terms of area.
- 1.7 However, in addition, existing recreational use of H34C to the west (also used by Brent geese) will be reduced by blocking off uncontrolled points of access to H34C along its eastern boundary with the Billy Trail. The informal footpath on the western boundary of H34C adjacent to Langstone Harbour is outside of the developer's control and hence would not be affected (anecdotal evidence from surveys suggests that this path is well used by walkers heading north/south along this path, and use results in birds in the northern part of H34C being flushed to the harbour). This will increase the area of habitat that is suitable for Brent geese to forage.



- 1.8 As a crude estimate of the area that is likely to be improved for Brent geese it is necessary to consider the likely area that would remain affected alongside the path next to the harbour.
- 1.9 The Solent Disturbance and Mitigation Project (Ref. 1) refers to data obtained by Liley *et al.* 2010 (Ref. 2) in respect of the behavioural responses of both waders and Brent Geese to disturbance from visitors. These responses were "measured in intertidal habitats, and so do not measure the response of Brent Geese in the full range of habitats they exploit" (pg. 57). The report goes on to state that "Brent Geese may be more habituated to disturbance in terrestrial habitats and so have shorter disturbance distances than in intertidal habitats".
- 1.10 In the absence of better predictors, the data from intertidal studies has been used to approximate the area that might be improved by preventing access from the Billy Trail. The median distance of 51.5m where disturbance occurred to Brent goose as a result of visitor use (Ref. 1; table 6.1) was used to calculate the likely area that would be more attractive to Brent geese after modifications to prevent access; the greatest distance where disturbance occurred (178m) was used to estimate the 'worst case' (this was also considered, in accordance with the precautionary principle introduced by the Habitats Directive for protected sites). In reality, the area of H34C that would be more attractive to Brent geese is likely to be somewhere in between the two since the mid part of the field is relatively narrow and may be less used than more open parts. There may well be other factors that influence the pattern of use. Table 1 and Plan 1435/P03 set out the areas.

	Distance where disturbance* occurred used to calculate area (m)	Area (ha)
Total area of H34C	-	11.8
Likely area made more attractive	51.5	9.4
Minimum area made more attractive	178	5.8

Table 1: Area of H34C likely to be made more attractive to Brent geese following access restrictions. *distances taken from Liley *et al* 2010

- 1.11 Of course, it is not possible to state quantitatively what the benefit of this approach will have in terms of compensation for habitat lost. But when considered together, it is concluded that the enhancement of 1.5ha of H34D together with access management in H34C to make at least 5.8ha of the field more attractive to Brent geese is likely to compensate for losses of 2.5ha of H34E. Natural England and Hampshire County Council's ecologist agreed with this conclusion.

Treatment of Replacement Habitat

- 1.12 Table 2 below sets out the cropping regime since 1999 in H34C and E. Contrary to what was stated in the strategy, information from the tenant farmer has confirmed the fields are not on rotation of cereals and legumes on alternate years. Winter wheat (which is a known forage crop;

Ref. 3) is grown biennially, with alternate years either rape (another forage crop), linseed, soya or peas. Since 1999 the fields have not supported crops known to be used by Brents in only four winters (circa 25% of winters). The situation is therefore considerably (25%) better than previously thought.

- 1.13 The farmer chooses crops based on market forces. It is not reasonable to require him to grow only those crops suitable for Brent geese, indeed Natural England and Hampshire County Council's ecologist agreed that this was not necessary.

Year	Crop	Year	Crop
1999	Rape	2007	Peas
2000	Wheat	2008	Wheat
2001	Soya	2009	Linseed
2002	Wheat	2010	Wheat
2003	Rape	2011	Rape
2004	Wheat	2012	Wheat
2005	Rape	2013	Peas
2006	Wheat		

Table 2: Crop rotation at H34C and E since 1999 (data provided by Simon Walter). Crops in bold are of known value to foraging Brent geese (Ref. 3)

Timing of Provision

- 1.14 It was agreed with Natural England and Hampshire County Council's ecologist that provision of compensatory habitat and recreation management was not required until such time as impacts were likely, with the objective to ensure that there is no net loss in availability of winter foraging.
- 1.15 Based on what was known, the strategy stated that provision would be before winter 2015/16 when the next winter wheat crop was sown. However, given the crop rotation in Table 2, the timing of the next suitable forage crop (and the fact the birds may use stubble in other years) may well be sooner, hence provision should instead be made before winter 2014/15.
- 1.16 Recreational use of informal pathways can be changed, but often requires some effort to educate users of the need to do so, and to change habits. The Hampshire Wildlife Trust considered that blocking of desire lines off the Billy Trail should take place well before geese arrive, and ideally in March to allow a full spring/summer season in which to persuade users to use other walking routes.



- 1.17 The heads of terms of the management and monitoring plan in the strategy have been modified accordingly in Table 3 below.

Limit Informal Recreational Access

- 1.18 RSPB was concerned that recreational access might be possible from the new development on to the remaining part of H34E to the north of the development. However, the development plans show no access to H34E from the development site. H34E is not currently used for recreational use (unlike H34C, there is no obvious destination from accessible locations around the field), and it is therefore not likely that there would be use of this field – and hence disturbance to birds – once constructed.
- 1.19 The proposed broad landscape buffer comprising of woody planting on the northern boundary of the site would minimise possible 'edge effects' from adjacent new development caused by noise and light, which might otherwise dissuade use of the adjacent margins of the field by geese.

Monitoring

- 1.20 It was agreed with Natural England and Hampshire County Council's ecologist that if monitoring in the first three years post construction confirmed that Brent geese were using H34E in equivalent numbers, and H34C in greater numbers (i.e. that the mitigation strategy is successful), then monitoring need not continue for three seasons. However, if this was not the case then three seasons of survey would be undertaken.
- 1.21 RSPB considered that there should be "*a requirement in place for the applicant to undertake further reasonable mitigation measures should the replacement habitat prove unsuccessful*". This point was discussed with Natural England and Hampshire County Council's ecologist at a meeting prior to production of the strategy. It was concluded that there were many variables that could not be controlled by the developer that could influence the use of the site (patterns of usage of fields on around the SPA; population fluctuations; etc) such that it was not reasonable to impose such a condition on the developer. Instead, it was agreed that since there was a high likelihood of success, and that – as with other similar schemes around the SPA – the monitoring data could be used to better understand what measures are successful, rather than to require the mitigation measures to be modified by the developer in some way.
- 1.22 As stated in the strategy, a full management and monitoring strategy (modified heads of terms in Table 3) would be controlled by planning condition, with its implementation secured in perpetuity by planning obligation.



Objective	Prescription	Timing	Responsibility
Ensure H34D is farmed in such a way that it supports suitable habitat for foraging geese and waders	Farm H34D on same rotation as H34E and H34C, with cereals in alternate years, and other crops that may be suited to foraging geese at other times.	In line with usual farming practice	Farmer
Maintain clear, open sight lines between H34D and H34E	Vegetation along the retained ditch cut/ploughed annually to ground level in autumn.	By September 2014*, then annually in September	Farmer
Control access from Hayling Billy trail into H34C	Install robust fencing to block existing desire lines. Install a notice stating reason for fencing to educate users, and to encourage ownership.	March 2014*	Developer
Monitor efficacy of mitigation	Ensure paths are not recreated, which would increase disturbance to birds. The fence should therefore be checked monthly from March to September, thereafter annually in autumn, before geese arrive; if necessary, repair.	Year one: Monthly March to September Thereafter: Annually in September	Developer
	Undertake up to three winters of monitoring surveys post completion of mitigation and only in years where winter wheat present; if numbers equivalent or greater in year 1 or 2 then stop monitoring. Submit records to Hampshire Biodiversity Information Centre	October to March; 2 visits per month	Developer/ecologist

*Assuming development commences in 2014, otherwise in March following commencement of development

Table 3: Modified heads of terms of management and monitoring plan

Section 2: References

- 1 R. A. Stillman, A. D. West, R. T. Clarke & D. Liley (February 2012) Solent Disturbance and Mitigation Project Phase II - Predicting the impact of human disturbance on overwintering birds in the Solent
- 2 Liley, D., Stillman, R. A. & Fearnley, H. 2010. *The Solent Disturbance and Mitigation Project: results of disturbance fieldwork 2009/10*. Report to the Solent Forum
- 3 Rowell, H.E. & Robinson, J.A. 2005. *Identifying and characterising the feeding areas of Dark-bellied Brent Geese Branta bernicla bernicla in and around Special Protection Areas in the UK*. *Waterbirds around the world*. Eds. G.C. Boere, C.A. Galbraith & D.A. Stroud. The Stationery Office, Edinburgh, UK. pp. 517-518.



Appendix 1: RSPB letter dated 7 October 2013

Dr John Hayward
Hayling Island Council

By Email only: DrJohn.Hayward@hayling.gov.uk

3 October 2013

Dear Mrs Hayward

Re: Request: During planning application for mixed-use development comprising up to 50 dwellings and 2,250sqm of light industrial accommodation (Use Class B1)
Location: Land north of South Road/End of Farning Way, West Quay, Hayling Island
Ref: APP/L13/00579

Many thanks for notifying the RSPB of the further information submitted in support of the above application. We welcome the applicant's new Brent Goose and Wader Mitigation Strategy (referred to as 'the Strategy'), but we do have a number of concerns regarding its recommendations.

The Strategy acknowledges the importance of the application site in supporting bird populations and its a large degree of reliance, following evidence of local overwintering highlighted in our previous response. Accordingly, the Strategy makes a number of recommendations to mitigate the loss of an important site of feeding resource by undertaking the following measures:

- Farm H340 (previously a 2.5ha grass paddock) to be planted with 10,000 and 10,000, with systems of shelterbelts planted
- Maintenance, open 100% area between H340 and H342
- Control access from Hayling Way into H340
- Monitor efficacy of mitigation for up to 5 (shelterbelts) years
- Implement the management and monitoring plan in perpetuity

The stated objectives of these measures is to ensure that there is no net loss in winter feeding resources. However, we are concerned that the above may not be successful in achieving that objective. The reasons set out below.

The Strategy suggests that the paddock within H340 is currently managed on a rotation, meaning that it is only available for winter feeding in alternate winters (when a winter wheat crop is present). It is proposed that the replacement habitat (H340) will be managed in the same way. However, this information is inconsistent with the reports we have received from neighbouring landowners, whose observations suggest that the last winter (2012/13) was the first in the last 10 years that that landowner have been absent from the site. A reduction in feeding of H340 is a relatively new introduction to the land, thus the

Send this document
Approved on the
1st of the following dates
to the Council
19/10/13

Dr John Hayward
Ref: 01/13/00579
regil.org.uk


RSPB



Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

1435_2011_R04b 19 November 2013 JA_RW



Daphney Haywood
Havant Borough Council

By Email only: Daphney.Haywood@havant.gov.uk

7 October 2013

Dear Mrs Haywood

Proposal: Outline planning permission for mixed-use development comprising up to 60 dwellings and 1,250sqm of light-industrial accommodation (Use Class B1)

Location: Land north of Station Road/East of Furniss Way, West Town, Hayling Island

Ref: APP/13/00639

Many thanks for consulting the RSPB on the further information submitted in respect of the above application. We welcome the applicant's new Brent Goose and Wader Mitigation Strategy (herein referred to as 'the Strategy'), but we do have a number of concerns regarding its recommendations.

The Strategy acknowledges the importance of the application site to wintering brent geese and (to a lesser degree) waders, following evidence of local observations highlighted in our previous response. Accordingly, the Strategy makes a number of recommendations to mitigate the loss of an estimated 2.5ha of feeding resource by undertaking the following measures:

- Farm H34D (currently a 1.5ha grass paddock) on same rotation as H34E and H34C, with cereals in alternate years
- Maintain clear, open sight lines between H34D and H34E
- Control access from Hayling Billy Trail into H34C
- Monitor efficacy of mitigation for up to 3 (alternate) years
- Implement the management and monitoring plan in perpetuity

The stated objective of these measures is to ensure that there is no net loss in winter foraging resource. However, we are concerned that the above may not be successful in achieving that objective, for the reasons set out below.

The Strategy suggests that the farmland within H34E is currently managed on a rotation, meaning that it is only suitable for winter foraging in alternate winters (when a winter wheat crop is present). It is proposed that the replacement habitat (H34D) will be managed in the same way. However, this information is inconsistent with the reports we have received from a neighbouring landowner, whose observations suggest that this last winter (2012/13) was the first in the last 19 years that that brent geese have been absent from the site. If rotational farming of H34E is a relatively new introduction to this land, then this

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Further, while the area of foraging habitat lost as a result of the development is calculated as 2.5ha, no assessment appears to have been made of the impacts on adjacent land which may be subject to disturbance from the development, deterring wintering birds from using a further area of land. The ditch bisecting the remaining area of H34E may also mean that geese in particular avoid the remaining southern area of field, as it may be perceived as being too small/enclosed. Nevertheless, even on the basis of a conservative estimate of 2.5ha of lost foraging resource, it is clear that the replacement habitat will be smaller than that lost by the footprint of the development. No explanation is offered in the Strategy as to why this smaller area might be sufficient to support the same number of geese as the area lost.

The proposed control of informal access to the adjacent field (H34C) is a welcome additional measure, however it is not clear how much this will reduce disturbance to brent geese and waders using that site, given that access will still be possible along the north and eastern boundaries of the site. It is also unclear whether this measure is seen as compensating for the smaller area of replacement habitat and if so to what extent.

- A minimum area of 2.5ha replacement feeding habitat to be secured on open, flat land, as close as possible to the H34 network of brent goose and wader feeding sites.
- The replacement habitat to be planted with either winter cereal, oilseed rape or permanent improved grassland, to ensure that it provides a suitable replacement resource for brent geese and waders on an annual basis.
- The replacement habitat to be in place before construction of the proposed development, and managed as such in perpetuity.
- Measures put in place to limit informal recreational access to the network of H34 brent goose and wader feeding sites.
- Monitoring carried out of the replacement habitat for a minimum period of 3 years, with a requirement in place for the applicant to undertake further reasonable mitigation measures should the replacement habitat prove unsuccessful.

Yours sincerely

Carrie Temple
Senior Conservation Officer
Email: carrie.temple@rspb.org.uk
Direct dial: 01273 763605

Plan

Area of Brent Goose Habitat likely to be Improved by Access Management
1435/P03 October 2013 JSA/JTF



Land off Station Road, Hayling Island
Brent Goose Mitigation Strategy

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